

**DISTRICT OF COLUMBIA
DOH OFFICE OF ADJUDICATION AND HEARINGS**

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

ECONOMIDES DEVELOPMENT and
FRANK ECONOMIDES
Respondents

Case No.: I-00-10648

FINAL ORDER

I. Introduction

On July 6, 2001, the Government served a Notice of Infraction charging Respondents with violating nine regulations relating to storm water management and soil erosion and sedimentation control at a construction site for a single family home at 1829 47th Place, N.W.¹ The Notice of Infraction alleged that the violations occurred on June 28, 2001, and sought a total of \$2,000 in fines. On July 24, 2001, Respondents filed a timely answer with a plea of Deny to each of the charges.

I held a hearing on August 28, 2001. Peter Nwangwu, the inspector who issued the Notices of Infraction, appeared on behalf of the Government. Also testifying for the

¹ The Notice of Infraction charged Respondents with violating: 21 DCMR 526.1, by engaging in land disturbing activity without instituting appropriate storm water management measures; 21 DCMR 506.2, by failing to comply with an approved erosion and sedimentation control plan; 21 DCMR 532.4(b), by failing to comply with a condition upon which a waiver was granted; 21 DCMR 529.1, by failing to comply with storm water management criteria before developing land; 21 DCMR 531.1, by failing to submit a storm water management plan; 21 DCMR 538.1(k), by failing to establish temporary cover by seeding or mulching a graded area; 21 DCMR 539.5, by creating a period of exposure exceeding 120 days; 21 DCMR 539.6, by failing to provide temporary or permanent stabilization during or after rough grading; and 21 DCMR 541.2, by failing to place excavated material on the uphill side of a trench.

Government was Massoud Massoumi, a Department of Health engineer assigned to this site. Respondent Frank Economides appeared on his own behalf and on behalf of Respondent Economides Development, LLC, in which he is a principal. At the commencement of the hearing, Respondents moved to change their plea to Admit with Explanation and I granted that motion without objection from the Government.

II. Summary of the Evidence

Respondents did not dispute in any way the Government's claim that they committed the nine violations charged in the Notice of Infraction. Instead, their primary argument was that the fine should be suspended or reduced because the Government inspector, Mr. Nwangwu, unfairly singled them out. Mr. Economides testified that Mr. Nwangwu was "hounding" him, and had a vendetta because Respondent was a small developer. Mr. Economides claimed that the big developers in the area did not "have any problems" with Mr. Nwangwu. Mr. Economides claimed that this was "blatant discrimination" in that "big guys on other jobs have violations," but that they have never even heard of Mr. Nwangwu. Respondents did not provide any evidence corroborating the suggestion that other developers were violating regulations but were not given Notices of Infractions.

Respondents also argued that the fine should be suspended or reduced because the situation at the site was not representative of normal conditions. Mr. Economides speculated that there may have been a delivery of material that morning, which may have required the displacement of dirt and hay. Mr. Economides also suggested that it might have been raining that morning, implying that this would have further excused the violations. Respondents did not provide any evidence, such as records of subcontractor deliveries or testimony of a delivery truck

driver, corroborating the speculation that there was a delivery of material that displaced dirt and hay. Nor did they provide any evidence supporting their belief that it was raining that morning. In fact, the photographs entered into evidence as Petitioner's Exhibit ("PX") 100 reflect a sunny day, as can be seen by the shadows cast by buildings and poles. There is no sign of wet pavement that would have indicated an earlier rain that morning.

Finally, Respondents claim that the fines for the violations should be reduced because they were not aware of the regulations at issue. Mr. Economides testified that complying with the regulations was "a learning process for me," at one point stating, "You guys know the regs; I don't."

I take judicial notice, from a review of the Office of Adjudication and Hearings records, that Respondents previously violated three of the regulations at issue here (21 DCMR 526.1, 21 DCMR 506.2, and 21 DCMR 532.4(b)) on December 12, 2000 at this same location. Respondents pleaded Admit to those charges and paid the applicable fines. *DOH v. Economides*, OAH No. I-00-11002 (Partial Closure Order, February 1, 2001).

III. Findings of Fact

1. Respondent Frank Economides is a principal in Respondent Economides Development, LLC, and has been in the construction business in Washington, DC for twenty years.

2. On June 28, 2001, Respondents were involved in the construction of a single-family home at 1829 47th Place, N.W.

3. Respondents admitted violating the following regulations on June 28, 2001 at 1829 47th Place, NW: 21 DCMR 526.1; 21 DCMR 506.2; 21 DCMR 532.4(b); 21 DCMR 529.1; 21 DCMR 531.1; 21 DCMR 538.1(k); 21 DCMR 539.5; 21 DCMR 539.6; and 21 DCMR 541.2.

4. Respondents claim that they were treated differently than other developers, but have not submitted any evidence to support that claim.

5. Respondents claim that the conditions at the site on the morning of June 28, 2001 may not have been representative of the normal site conditions, because there may have been a delivery of material and there may have been rain, but they have not submitted any evidence to support that speculation. In fact, the photographs in evidence as PX 100 show a sunny day at the time of the violation.

6. Even if relevant, Mr. Economides' claim that he was not aware of the regulations at issue is not credible. Respondents previously had pleaded Admit to violating three of the rules at issue in this case – 21 DCMR 526.1, 21 DCMR 506.2, and 21 DCMR 532.4(b) – at the same property at issue here.

IV. Conclusions of Law

1. On June 28, 2001, Respondents violated 21 DCMR 526.1; 21 DCMR 506.2; 21 DCMR 532.4(b); 21 DCMR 529.1; 21 DCMR 531.1; 21 DCMR 538.1(k); 21 DCMR 539.5; 21 DCMR 539.6; and 21 DCMR 541.2 at 1829 47th Place, N.W. Violations of §§ 529.1, 531.1, 538.1(k), 539.4, 539.5, 539.6 and 541.2 are Class 3 infractions, punishable by a fine of \$100 each for a first offense. 16 DCMR 3201, 3234.2(d), (g), (w), (z), (aa), (cc). Violations of §§ 506.2 and 532.4(b) also are Class 3 infractions, 16 DCMR 3234.2(c), (j). Because this is

Respondents' second violation of those provisions, the authorized fine is \$200 for each violation. 16 DCMR 3201. Violation of § 526.1 is a Class 2 infraction. 16 DCMR 3234.1(c). Because this is Respondents' second violation of that provision, the authorized fine is \$1,000. 16 DCMR 3201. The total fine amount authorized, therefore, is \$2,000.

2. Respondents' claim that they were treated differently than other developers has no evidentiary support in the record, and therefore does not warrant suspension or reduction of the fines. Even if there were such evidence, it would not help Respondents. A government legitimately can enforce its law against a few persons, or even just one, to conserve resources, to establish a precedent or for other legitimate reasons. *Falls v. Dyers*, 875 F.2d 146, 148 (7th Cir. 1989). Absent evidence of improper motive (and Respondents have proffered none), a claim that others have not been prosecuted for the same violation does not provide a basis for suspending or reducing a fine. *DOH v. Popeye's/Faris Enterprises*, OAH No. I-00-70252 at 3-5 (Final Order, August 8, 2001).

3. Respondents' claim that conditions at the site on the morning of June 28, 2001 may not have been representative of the normal site conditions, either due to a possible delivery of materials and/or a rain storm, has no support in the record, and therefore is not a basis for reducing or suspending the fines.²

4. Respondents' claim that they were not aware of the regulations is not a basis for suspending or reducing the fine. *DOH v. The Roly Company*, OAH No.: I-00-10325 (Final Order, November 3, 2000) (Respondents should have been aware of the requirement to obtain a

² I note that these conditions, even if proven to have occurred, were foreseeable events that would not excuse the imposition of a fine. Indeed, occurrences such as deliveries and rain are among the reasons for the storm water management and soil erosion control regulations.

permit; suspension of the fine would send a message to Respondents and other contractors that they need not make a thorough inquiry about applicable regulations before starting work in the District of Columbia). Such a claim is especially unavailing from experienced contractors such as Respondents who previously had admitted violating some of the same regulations at the same site at issue here. “Persons conducting business in the District of Columbia are expected to be aware of, and to comply with, laws regulating their business.” *DOH v. VIP Adventures Seniors Unlimited, Inc.*, OAH No. I-00-11215 at 2 (Final Order, June 5, 2002), citing *DOH v. Bigbee Steel and Tank Co.*, OAH No. I-00-11217 at 3-4 (Final Order, May 16, 2002); *DOH v. Bloch & Guggenheimer, Inc.*, OAH No. I-00-10439 at 3-4 (Final Order, April 18, 2001).

5. Although Respondents have changed their plea to Admit with Explanation, I will not reduce the fine based on an acceptance of responsibility. I conclude that Respondents have not truly accepted responsibility but rather have made an unwarranted attempt to shift the blame for their unlawful conduct. Accordingly, I will impose the full amount of the authorized fines.

V. Order

Based upon the foregoing findings of fact and conclusions of law, it is, this _____ day of _____, 2003:

ORDERED, that Respondents, who are jointly and severally liable, shall pay a total of **TWO THOUSAND DOLLARS (\$2,000)** in accordance with the attached instructions within 20 calendar days of the mailing date of this Order (15 days plus 5 days service time pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

ORDERED, that if Respondents fail to pay the above amount in full within 20 calendar days of the date of mailing of this Order, interest shall accrue on the unpaid amount at the rate of 1½ % per month or portion thereof, starting from the date of this Order, pursuant to D.C. Official Code § 2-1802.03 (i)(1); and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondents' licenses or permits pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real and personal property owned by Respondents pursuant to D.C. Official Code § 2-1802.03(i) and the sealing of Respondents' business premises or work sites pursuant to D.C. Official Code § 2-1801.03(b)(7).

/s/ 02/13/03

John P. Dean
Administrative Judge